was another track of a different railway corporation parallel to, and about fifty feet from, the track of the appellant. On the occasion of the accident, while the deceased was on duty by the appellant's track, a child stumbled and fell on the track of the other corporation in front of an approaching train. In attempting to rescue the child, the deceased was killed. *Held*, the accident did not arise out of and in the scope of the employment. *Priglise* v. *Fonda, etc., R. Co.*, 183 N. Y. Supp. 414. See NOTES, p. 390.

WILLS—LETTERS OF OVERSEAS SOLDIER VALID AS NUNCUPATIVE WILL.—The testator, a soldier in the United States Army during the recent war, held a war risk insurance policy payable to his estate. While in active service he wrote two letters home, in which he directed the proceeds of the policy to be paid to his sister whose infancy had prevented her from being named as beneficiary. Proof was made of his capacity, *animus testandi*, apprehension of death, and the corroboration of two witnesses. *Held*, the letters may be probated. *In re Hickey's Estate*, 184 N. Y. Supp. 399.

It is a well-known rule of the Common Law that a will of personal property, in the testator's own hand, without seal or witnesses present at its publication, is good; and no particular form of expression is material, if only the *animus testandi* is manifest. *Leathers* v. *Greenacre*, 53 Me. 561.

Before the Statute of Frauds, the ecclesiastical courts of England, to whose jurisdiction the establishment of testaments relating to personal estate belonged, required no ceremonies in the publication thereof, nor the subscription of any witnesses to attest the same. It is to be observed that the restrictions of that statute did not extend to wills made by any soldier being in actual military service, or to any mariner or seaman being at sea. *Leathers* v. *Greenacre, supra; In re O'Connor's Will*. 121 N. Y. Supp. 903.

The same exception in favor of informal testaments and nuncupative wills of soldiers and sailors is retained in England by the Statute of Wills. 1 Vict. c. 26, § 11. See *Hubbard* v. *Hubbard*, 8 N. Y. 196. In the greater part of the United States the law of wills is of pure English origin, modified by modern statutes, and in almost all of our States there are statutes practically identical with the English Statute of Wills, which except from the rigor of their provisions testamentary dispositions of personal estate made by soldiers and sailors in actual military service. Such statutes are to be construed strictly. *Taylor's Appeal*, 47 Pa. St. 31. For nuncupative wills, with the exception stated, have never been favorably regarded by the courts. *Godfrey* v. *Smith*, 73 Neb. 756, 103 N. W. 450

In general, the soldier testator need not be *in extremis* nor in fear of immediate death when making such a will. *Leathers* v. *Greenacre, supra; Van Deuzer* v. *Gordon's Estate*, 39 Vt. 111. In some States, however, this is necessary. *Ray* v. *Wiley*, 11 Okla. 720, 69 Pac. 809. But it is universally required that such testator be in actual military service, and when he is in the enemy's country, performing such service, whether

in camp, battle or campaign, or in his own State or country in case of rebellion or insurrection, he is within the meaning of the term. *Van Deuzer* v. *Gordon's Estate, supra.*

In the English case of *In the Goods of Hiscock*, (1901) P. 78, the test to be applied, in considering whether a nuncupative will of a soldier is entitled to probate under the eleventh section of the Wills Act, is whether, before the will is made, some step under orders has been taken by the soldier in view of and preparatory to joining the forces in the field. After the order of mobilization has been given, although the testator has done nothing under it, he is held to be a soldier within the meaning of this section. *Gattward* v. *Knee*, (1902) P. 99. A soldier ordered to the hospital when on the march to meet the enemy is also within the exception. *Gould* v. *Safford's Estate*, 39 Vt. 498. But not a volunteer not yet mustered into service. *Pierce* v. *Pierce*, 46 Ind. 86.

The fact that his testament is in the form of a letter does not bring it within the rules governing holographic wills, for since soldiers and sailors in actual military service have been exempt from statutes which regulate testamentary formalities, their wills must be sustained, if good at common law. *Leathers* v. *Greenacre, supra; In re O'Connor's Will, supra.* Hence the instant decision is undoubtedly sound.

In Virginia, the Code of 1919, § 5231, provides as follows: "A soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done."

For brief discussion of this point, see 2 VA. LAW REG. (N. S.) 713.